



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Patent Application of:  
Landau

Serial No.: **10/090,574**

Filed: **March 05, 2002**

Examiner: **H. N. Sheikh**

Group Art Unit: **1615**

Date: **May 11, 2006**

**For: SYSTEM AND METHOD OF  
ADMINISTERING PHARMACEUTICALS  
AND NUTRACEUTICALS AS PART OF A  
BEVERAGE CONTAINER**

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**SUPPLEMENTAL APPEAL BRIEF OF APPELLANT**

Sir:

The Applicant herein files a supplemental appeal brief in reply to Notice Of Non-Compliance dated April 11, 2006. The Applicant herein files this Supplemental Brief in accordance with 37 C.F.R. 41 et seq.

**I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]**

The subject application is not assigned. As such, the Real Party in Interest is the Applicant.

**II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]**

No other related application is currently subject to an Appeal or Interference.

### **III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]**

Claims 1- 17 are pending in this application.

Claims 1 - 17 stand as finally rejected by the Examiner.

### **IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]**

The amendment filed by the Applicant on January 03, 2005 was entered by the Examiner. No other amendments were filed.

### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]**

The subject application has two pending independent claim, which are Claim 1 and Claim 12. All other claims depend from these three dependent claims.

Claim 1 sets forth a method of administering a biologically beneficial compound. (*See preamble of Claim 1*) The method requires the step of providing a beverage container (*10, Fig. 1*) having a cap assembly (*14, Fig. 1*) through which liquid (*22, Fig. 1*) in the beverage container (*10*) is drunk. The cap assembly (*14*) has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly (*14*). (*See Summary, page 5, line 4-8*)

A mass of a biologically beneficial compound (*20*) is formed on an exterior surface of the cap assembly (*12*). (*See Specification, page 7, lines 19-22*) The mass of biologically beneficial compound (*20*) passes into the mouth of a person drinking from the beverage container through the cap assembly (*14*). (*See Specification, page 9, lines 6-8*)

Using the method of Claim 1, it will be understood that a cap assembly (*14*) is provided that has a biologically beneficial compound (*20*) disposed on its exterior. In this manner, when the cap assembly (*12*) is placed in the mouth, the biologically beneficial compound (*20*) is placed

in the mouth. The biologically beneficial compound can then be consumed. (*See Specification, page 9, lines 6-8*) However, prior to being placed within the mouth, the biologically beneficial compound (20) is isolated from the liquid that passes through the cap assembly (14). (*See specification, page 8, lines 10-14*)

Claim 12 sets forth a method similar to Claim 1, however the step of providing a bottle (12, *Fig. 1*) containing a consumable liquid (22) is positively claimed. (*See Claim 12, first claimed element*) provided. A cap assembly (14) for the bottle is also provided. The cap assembly (14) can be selectively opened and the consumable liquid (22) drunk from the bottle (12) through the cap assembly. A consumable material (20) is provided on an exterior surface of the cap assembly (14). (*See Specification, page 7, lines 19-20*) The consumable material (20) passes into the mouth when the liquid (22) is drunk directly from the cap assembly (14). (*See Specification, page 9, lines 6-8*)

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]**

The grounds of rejection to be reviewed on appeal are as follows:

1. - **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 5,456,351 to Johnson.**

2. - **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 6,527,109 to Schoo.**

**VII. ARGUMENTS. [37 CFR §41.37(c)(7)]**

**GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 5,456,351 to Johnson.**

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

**Claim 1**

Claim 1 sets forth a method of administering a biologically beneficial compound. The method requires the step of providing a beverage container having a cap assembly through which liquid in the beverage container is drunk. The cap assembly has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly.

A mass of a biologically beneficial compound is formed on an exterior surface of the cap assembly. The mass of biologically beneficial compound passes into the mouth of a person drinking from the beverage container through the cap assembly.

Using this method, it will be understood that a beverage container cap is provided that has a biologically beneficial compound disposed on the exterior of the cap. In this manner, when the cap is placed in the mouth, the biologically beneficial compound is placed in the mouth. The

biologically beneficial compound can then be consumed. However, prior to being placed within the mouth, the biologically beneficial compound is isolated from the liquid that passes through the cap.

**The Johnson patent** discloses a lid for a container that can be peeled off the container. The lid has two halves that define a pocket. Within the pocket can be kept a secondary edible product. To use the device, the lid is partially peeled open to remove the secondary edible product. The lid is then completely peeled away to expose the contents of the container. See Johnson, the method sequence represented by Fig. 2, Fig. 3 and Fig. 4 with accompanying description.

The Johnson patent does not disclose or suggest the step of providing a beverage container having a cap assembly through which liquid from the beverage container is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container.

The Johnson patent does not disclose or suggest the step of forming a mass of a biologically beneficial compound on an exterior surface the cap assembly. Rather, in the Johnson patent, a secondary object is merely held within a pocket inside the lid.

Lastly, the Johnson patent does not disclose or suggest the step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, The Johnson patent clearly shows that the secondary object is completely

removed from the lid before it is used.

As a result, it can be seen that Johnson patent fails to show a single method step set forth by Claim 1. The Johnson patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

Claim 12.

Claim 12 sets forth a method similar to Claim 1. In the method of Claim 12, a bottle containing a consumable liquid is provided. A cap assembly for the bottle is also provided. The cap assembly can be selectively opened and the consumable liquid drunk from the bottle through the cap assembly.

A consumable material is provided on **an exterior surface** of the cap assembly. The consumable material passes into the mouth when the liquid is drunk directly from the cap assembly.

The Johnson patent does not disclose or suggest the step of providing a bottle having a cap assembly through which liquid is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container

The Johnson patent does not disclose or suggest the step of providing consumable

material on an exterior surface the cap assembly. Rather, in the Johnson patent a secondary object is merely held within a pocket inside the lid.

Lastly, the Johnson patent does not disclose or suggest the step of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly.

As a result, it can be seen that Johnson patent fails to disclose the method steps set forth by Claim 12. The Johnson patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 103 rejection should be withdrawn.

**GROUND 2 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 6,527,109 to Schoo.**

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

The Schoo patent discloses a cap for a beverage bottle that has a liquid-dissolvable disk that is held within the structure of the cap. The disk dissolves in the beverage when the beverage bottle is shaken. See Abstract of Schoo patent.

Claim 1

As applied to the wording of pending Claim 1, the Schoo patent does not disclose or

suggest the method step of forming a mass of a biologically beneficial compound on an exterior surface the cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken. This is directly opposite to the present invention that attempts to isolate the biologically beneficial material from the beverage until it is consumed.

Furthermore, the Schoo patent does not disclose or suggest the method step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.

As a result, it can be seen that Schoo patent fails to show or suggest the method steps set forth by Claim 1. The Schoo patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

#### Claim 12

As applied to the wording of pending Claim 12, the Schoo patent does not disclose or suggest the method step of providing consumable material on an exterior surface the a cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken.

Furthermore, the Schoo patent does not disclose or suggest the method step of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.

As a result, it can be seen that Schoo patent fails to show or suggest the method steps set forth by Claim 12. The Schoo patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 102 rejection should be withdrawn.

### **CONCLUSION**

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejections and allow the remaining pending claims.

Respectfully Submitted,

  
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**VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)]**

The pending claims stand as follows:

1. A method of administering a biologically beneficial compound, comprising the steps of:

    providing a beverage container having a cap assembly through which liquid in said beverage container is drunk, wherein said cap assembly has at least one exterior surface that passes into a drinker's mouth when said liquid is drunk through said cap assembly;

    forming a mass of a biologically beneficial compound on said at least one exterior surface of said cap assembly, wherein said mass of biologically beneficial compound passes into the mouth of a person drinking from said beverage container through said cap assembly.

2. The method according to Claim 1, further including the step of providing a removable protective cover around said mass of biologically beneficial material.

3. The method according to Claim 1, wherein said step of forming a mass includes compacting a powdered material into a solid form.

4. The method according to Claim 3, wherein said powdered material is compacted into said solid form directly upon said at least one exterior surface of said cap assembly.
5. The method according to Claim 3, wherein said powdered material is compacted into said solid form and is then attached to said at least one exterior surface of said cap assembly.
6. The method according to Claim 1, wherein said step of forming a mass includes molding molten material around said at least one exterior surface of said cap assembly and allowing said molten material to solidify.
7. The method according to Claim 1, wherein said step of forming a mass includes forming an annular structure, and said method includes attaching said annular structure to said at least one exterior surface of said cap assembly.
8. The method according to Claim 1, wherein said biologically beneficial material is selected from a group consisting of pharmaceuticals and nutraceuticals.
9. The method according to Claim 1, wherein said step of forming a mass includes the substeps of:
  1. placing at least a segment of said cap assembly in a press;

placing powdered biologically beneficial material in said press; and

compressing said powdered biologically beneficial material into a solid form around said segment of said cap assembly.

10. The method according to Claim 1, further including a liquid in said beverage container that can be drunk through the cap assembly of said beverage container, wherein said biologically beneficial material is not completely soluble in said liquid.

11. The method according to Claim 1, further including a liquid in said beverage container that can be drunk through the cap assembly of said beverage container, wherein said biologically beneficial material is adversely effected over time when mixed with said liquid.

12. A method, comprising the steps of:

providing a bottle containing a consumable liquid;

providing a cap assembly for said bottle, wherein said cap assembly has at least one exterior surface, and wherein said cap assembly can be selectively opened and said consumable liquid drunk from said bottle through said cap assembly;

providing a consumable material on said at least one exterior surface of said cap assembly, wherein said consumable material passes into the mouth when said consumable

liquid is drunk directly from said cap assembly.

13. The method according to Claim 12, wherein said step of providing a consumable material includes compressing powdered material into a solid form on said at least one exterior surface of said cap assembly.

14. The method according to Claim 12, wherein said step of forming a mass includes molding molten material around said at least one exterior surface of said cap assembly and allowing said molten material to solidify.

15. The method according to Claim 12, wherein said step of forming a mass includes forming an annular structure, and said method includes attaching said annular structure to said at least one exterior surface of said cap assembly.

16. The method according to Claim 12, wherein said consumable material is selected from a group consisting of pharmaceutical compounds and nutraceutical compounds.

17. The method according to Claim 12, wherein said consumable material is not completely soluble in said consumable liquid.

**IX. EVIDENCE APPENDIX [37 CFR 41.37(c)(1)(ix)].**

There is no evidence submitted under 37 CFR 1.130, 1.131 or 1.132 or any other evidence relied upon by the applicant

**X. RELATED DECISION APPENDIX [37 CFR 41.37(c)(1)(x)].**

There are no decisions by a court or the Board relevant to this appeal.



AP/165  
IPR

PTO/SB/21 (08-00)

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# TRANSMITTAL FORM

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		Application Number	10/090,574
		Filing Date	03/05/2002
		First Named Inventor	Landau
		Group Art Unit	1615
		Examiner Name	H. N. Sheikh
Total Number of Pages in This Submission	Attorney Docket Number		

## ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
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<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	
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<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		
Supplemental Appeal brief		

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Firm or Individual name	LaMorte & Associates
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